

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE SCHEINDLIN

-----X  
C.D. KOBSONS, INC.,

Plaintiff,

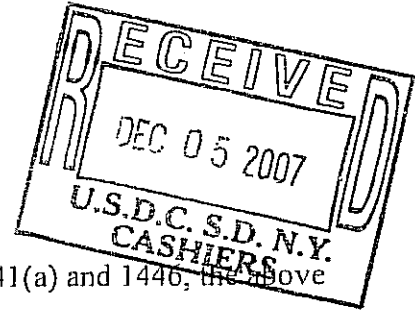
-against-

UNITED NATIONAL SPECIALTY  
INSURANCE COMPANY,

Defendant.  
-----X

07 CV 11034  
Civil Action No.

NOTICE OF REMOVAL



PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441(a) and 1446, the above captioned action is removed by defendant, UNITED NATIONAL SPECIALTY INSURANCE COMPANY ("United"), from the Supreme Court of the State of New York, New York County, to the United States District Court for the Southern District of New York, by the filing of this Notice of Removal with the Clerk of the United States District Court for the Southern District of New York. As grounds therefor, United states as follows:

1. This action may be removed to this Court by United pursuant to the provisions of 28 U.S.C. §§ 1441(a) and 1446.
2. On or about November 27, 2007, plaintiff, C.D. Kobsons, Inc. ("Kobsons") filed an action in the Supreme Court of the State of New York, County of New York, entitled *C.D. Kobsons, Inc. v. United National Specialty Insurance Company*, Index No. 115771/07 (the "State Court Action"). Copies of plaintiff's Summons and Complaint and Order to Show Cause, seeking a temporary restraining order, which constitute all process, pleadings and orders served upon United in the State Court Action, are attached as Exhibits "A" and "B" respectively.

3. United purportedly was served with the Summons and Complaint in the State Court Action on or about November 28, 2007.
4. This Notice of Removal is filed within thirty days after the Complaint was first served on the defendant and therefore is timely filed pursuant to 28 U.S.C. § 1446(b).
5. A copy of the written notice required by 28 U.S.C. § 1446(d), addressed to the adverse party and to the Clerk of the New York Supreme Court, New York County, is attached as Exhibit "C" and will be filed in the State Court Action and forwarded to plaintiff upon the filing of this Notice of Removal.

**JURISDICTION EXISTS UNDER 28 U.S.C. § 1332**

6. This action is removable pursuant to 28 U.S.C. § 1441(a) because it is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332, in that there is a complete diversity between all parties and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

**All Parties are Diverse**

7. As alleged in the Complaint, plaintiff Kobsons is a domestic New York corporation located in New York, New York (Exhibit "A", Compl. ¶1). Upon information and belief, plaintiff is a citizen of the State of New York.
8. United is a corporation of the State of Wisconsin (Exhibit "A", Compl. ¶2), with its principal place of business in the State of Pennsylvania. Therefore, it is now, and at the time the State Court Action was commenced, a citizen of Wisconsin and Pennsylvania for diversity jurisdiction purposes. *See* 28 U.S.C. § 1332(c)(1).
9. There is thus complete diversity of citizenship between plaintiff and defendant.

**The Amount in Controversy Exceeds \$75,000**


10. For this Court to have federal subject matter jurisdiction based upon diversity of citizenship, the amount in controversy must exceed the sum of value of \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a).
11. In the State Court Action, Kobsons' Complaint seeks a declaratory judgment, declaring that United is obligated to continue coverage under the insurance policy it issued to Kobsons, and which was cancelled on October 30, 2007.
12. The insurance policy issued to Kobsons, Policy No. M5200158, insured Kobsons' property known as 500 West 28<sup>th</sup> Street, New York, NY, with limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate, as well as \$800,000 for property damage.
13. Should Kobsons prevail and coverage be reinstated, United could potentially be called upon to pay claims totaling up to \$2,800,000, the policy limits. Accordingly, the amount-in-controversy requirement is satisfied.
14. Consequently, this action is removable to federal court because there is original federal jurisdiction under 28 U.S.C. § 1332.
15. Accompanying this Notice of Removal are a Civil Cover Sheet, Fed.R.Civ.P. Rule 7.1 Disclosure Statement, and a check in the amount of \$350.00 for the required filing fee.

WHEREFORE, defendant United National Specialty Insurance Company removes the State Court Action from the Supreme Court of the State of New York, New York County, to this Court, and prays that this Court take jurisdiction of this civil action to the exclusion of any further proceedings in said state court.

Date: December 4, 2007

Yours, etc.

NICOLETTI GONSON SPINNER & OWEN LLP

By: 

Edward S. Benson

Attorney Bar Code: 1908

Attorneys for Defendant

UNITED NATIONAL SPECIALTY

INSURANCE COMPANY

555 Fifth Avenue – 8<sup>th</sup> Floor

New York, New York 10017

(212) 730-7750

TO:

Brill & Associates, P.C.  
Attorneys for the Plaintiff  
111 John Street, Suite 1070  
New York, NY 10038  
(212) 374-9101  
File No.: 1293-CDK

## **EXHIBIT A**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
C.D. KOBSONS, INC.,

Plaintiff,

-against-

UNITED NATIONAL SPECIALTY INSURANCE  
COMPANY,

Defendant.  
-----X

Index No. 115771/07

Venue: CPLR 503

**SUMMONS**

Plaintiff's Address:  
212 West 122<sup>nd</sup> Street  
New York, New York

**TO THE ABOVE NAMED DEFENDANT:**

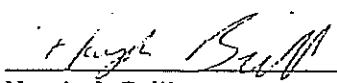
**YOU ARE HEREBY SUMMONED** to answer the complaint of the plaintiff, C.D. KOBSONS, INC., copies of which are herewith served upon you, and to serve copies of your answer upon the undersigned, within (20) days after service upon you of this Summons and Complaint, exclusive of the day of service, or within (30) days after completion of service where service is made by any manner other than personal delivery. In case of your failure to answer the complaint, judgment will be taken against you by default for the relief in the complaint.

Dated: New York, New York  
November 27, 2007

Yours, etc.

**BRILL & ASSOCIATES, P.C.**

By:

  
Haydn J. Brill

Attorneys for Plaintiff

111 John Street, Suite 1070

New York, New York 10038

(212) 374-9101

Our File No: 1293-CDK

To:

UNITED NATIONAL SPECIALTY INSURANCE COMPANY  
411 East Wisconsin Avenue, Suite 700  
Milwaukee, Wisconsin 53202

UNITED NATIONAL SPECIALTY INSURANCE COMPANY  
c/o Superintendent of Insurance for the State of New York.  
25 Beaver Street  
New York, New York 10004

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----x  
C.D. KOBSONS, INC.,

Index No. 115771/07

Plaintiff,

-against-

UNITED NATIONAL SPECIALTY INSURANCE  
COMPANY,

**VERIFIED COMPLAINT**

Defendant.  
-----x

Plaintiff, C.D. KOBSONS, INC., as and for its Verified Complaint for a declaratory judgment herein, respectfully sets forth and alleges, upon information and belief, as follows:

**THE PARTIES AND JURISDICTION**

1. Plaintiff, C.D. KOBSONS, INC. (hereinafter "KOBSONS") is a domestic corporation of the State of New York.
2. That at all relevant times hereinafter mentioned, defendant UNITED NATIONAL SPECIALTY INSURANCE COMPANY (hereinafter "UNITED") was and still is a foreign corporation of the State of Wisconsin admitted to issue general liability insurance policies in the State of New York since May 17, 1999.
3. That at all times hereinafter mentioned, KOBSONS was and is the owner of certain real property known as 500 West 28<sup>th</sup> Street, New York, New York.
4. That in consideration of the premiums paid, KOBSONS obtained and defendant UNITED issued and delivered a general liability insurance policy to KOBSONS known and designated as policy number M5200158 for a one year term commencing on July 1, 2003.
5. The aforesaid policy issued by UNITED to KOBSONS was renewed on June 15, 2007, for a one year term.



6. The aforesaid policy procured by KOBSONS and issued by defendant UNITED was in full force and effect on October 17, 2007 when the New York City Department of Buildings issued an Emergency Declaration to KOBSONS declaring, 500 West 28<sup>th</sup> Street, New York, New York, to be an "unsafe" building.

7. Thereafter, on or about October 30, 2007, KOBSONS received a Notice of Cancellation from UNITED stating that coverage will be terminated as of November 27, 2008.

8. The Notice of Cancellation improperly relied upon Section 3426(c)(1) of the Insurance Law subsection (E), which states that an insurer issued liability and property insurance may cancel coverage for any:

(E). material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with the insurer's objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed.

9. UNITED's purported cancellation of the policy issued to KOBSON's was improper and not based on any physical change in the insured's property; was not in accordance with the insurer's objective uniform applied underwriting standards in effect at the time the policy was renewed; or a material change in the nature or extent of the risks that existed in June, 2007 which caused the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was last renewed.

**AS AND FOR A FIRST CAUSE OF ACTION**

10. Plaintiff C.D. KOBSONS, INC. repeats, reiterates and realleges each and every allegation contained in the paragraphs numbered 1 through 9 of this complaint inclusive with the same force and effect as if herein again set forth at length.

11. That an actual controversy has arisen between Plaintiff and Defendant as to whether Defendant is entitled to cancel the general liability insurance policy it issued to Plaintiff pursuant to Section 3426(c)(1) of the Insurance Law subsection (E).

12. Plaintiff has no adequate remedy against UNITED other than to seek an adjudication of its rights to general liability coverage under the policy issued by UNITED.

13. Plaintiff will be immediately and irreparably harmed should UNITED cancel the policy issued to KOBSONS.

14. Plaintiff will be aggrieved unless the Court makes an immediate declaration of the obligations of UNITED to continue coverage under the policy.

**AS AND FOR A SECOND CAUSE OF ACTION**

15. Plaintiff KOBSONS repeats, reiterates and realleges each and every allegation contained in the paragraphs numbered 1 through 14 of this complaint inclusive with the same force and effect as if herein again set forth at length.

16. That defendant UNITED was under a duty to investigate and/or inspect the subject premises insured by policy number M5200158 when it renewed KOBSONS insurance on June 15, 2007 and failed to do so.

17. Defendant UNITED has waived, in whole or in part, its rights to cancel coverage as a result of any material physical change or material nature in the risk since the subject premises is in the identical condition that it was on the date of the renewal.

WHEREFORE, plaintiff demands judgment adjudicating its rights to enjoining UNITED from canceling policy number M5200158, and that this court:

- a. determine and declare that UNITED's termination of coverage be deemed null and void;
- b. determine and declare that pursuant to the insurance procurement contract that 500 West 28<sup>th</sup> Street is insured by UNITED under a general liability policy to the end of the policy term and any applicable renewals to which KOBSONS may be entitled;
- c. determine and declare that the defendant has waived, and is estopped from canceling coverage to KOBSONS or otherwise restricting the coverage available to the plaintiff;
- d. granting such other and further relief as to the court may seem just and proper.

Dated: New York, New York  
November 27, 2007

Yours, etc.

BRILL & ASSOCIATES, P.C.

By: Haydn J. Brill  
Attorneys for Plaintiff  
111 John Street, Suite 1070  
New York, New York 10038  
(212) 374-9101

To:

UNITED NATIONAL SPECIALTY INSURANCE COMPANY  
411 East Wisconsin Avenue, Suite 700  
Milwaukee, Wisconsin 53202

UNITED NATIONAL SPECIALTY INSURANCE COMPANY  
c/o Superintendent of Insurance for the State of New York.  
25 Beaver Street  
New York, New York 10004

*Attorney Verification*

Haydn J. Brill, an attorney duly admitted to the practice of law in the State of New York, deposes and says:

That he is the attorney for the plaintiff, C.D. KOBSONS, INC., in the within action; that he has read the within Complaint and knows the contents thereof, and that same is true to his own knowledge, except and to the matters herein stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

That the sources of his information and knowledge are investigation and records on file.

That the reason this verification is being made by deponent and not by defendant is that the defendant is not within the county where deponent has his office.

Dated: New York, New York  
November 27, 2007

---

Haydn J. Brill

*Index No.:*

*Year*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

C.D. KOBSONS, INC.,

Plaintiff,

-against-

UNITED NATIONAL SPECIALTY INSURANCE COMPANY,

Defendant.

---

SUMMONS AND VERIFIED COMPLAINT FOR A DECLARATORY JUDGMENT

---

BRILL & ASSOCIATES, P.C.

*Attorneys for Plaintiff*

*C.D. Kobsons, Inc.*

111 John Street, Suite 1070

New York, New York 10038

(212) 374-9101

---

*To:*

*Attorney(s) for*

*Service of a copy of the within Summons and Verified Complaint for a Declaratory Judgment is hereby admitted.*

*Dated: November 28, 2007*

.....  
*Attorney(s) for Defendant-United National  
Specialty Insurance Company*

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PLEASE TAKE NOTICE

NOTICE OF ENTRY

☐ *that the within is a (certified) true copy of a  
duly entered in the office of the clerk of the within named Court on*

NOTICE OF SETTLEMENT

☐ *that an Order of which the within is a true copy will be presented for  
settlement to the Hon. one of the judges of the within named Court, at , on , at*

*M.*

*Dated:*

*Yours, etc.*

BRILL & ASSOCIATES, P.C.

*Attorneys for Plaintiff*

111 John Street, Suite 1070

New York, New York 10038

(212) 374-9101

## **EXHIBIT B**

*IAS Part*  
At ~~the~~ *IAS Term* of the Supreme of Court of the  
State of New York, held in and for the County of  
New York, at the Courthouse located at 60 Centre  
Street, New York, New York on the 27 day of  
November, 2007.

P R E S E N T:

Honorable Edmond, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

C.D. KOBSONS, INC.,

Plaintiff,

-against-

UNITED NATIONAL SPECIALTY INSURANCE  
COMPANY,

Defendant.

Index No. 07/115771

ORDER TO  
SHOW CAUSE

Upon the Affirmation of Corey M. Reichardt, Esq., dated November ~~26~~ <sup>27<sup>th</sup></sup>, 2007, and all the  
papers and proceedings heretofore had herein,

LET the Parties <sup>or counsel</sup> show cause at IAS Term, Part 35, of this court to be held at the  
courthouse thereof, located at 60 Centre Street, Room 438, New York, New York 10007, on the  
12 day of December, 2007, at 9:30 o'clock in the forenoon of that day or as soon thereafter  
as counsel can be heard why an order should not be made and entered herein:

1. Pursuant to CPLR Section 6313, issuing a Temporary Restraining Order,  
enjoining UNITED NATIONAL SPECIALTY INSURANCE COMPANY from  
terminating the policy it wrote for C.D. KOBSONS, INC. under policy number  
#M5200158 on June 15, 2007;

2. For such other and further relief as the court deems just, proper and equitable in the circumstances.

*and cause being alleged*  
SUFFICIENT ~~REASON APPEARING~~ THEREFORE, and pending the hearing of *cancellation took effect*

this application, the defendant be and are hereby enjoined from terminating the insurance policy *in*

*Cal*  
*Be*  
it issued for plaintiff under policy number # M5200158 on June 15, 2007; and

*cause being alleged*  
SUFFICIENT ~~REASON APPEARING~~ THEREFORE, let service of a copy of this order, together with the papers upon which it was granted, *along with service of the summons and complaint* upon: defendant, UNITED NATIONAL SEPCIALTY INSURANCE COMPANY *Personal Service* via ~~Overnight Mail~~ on or before the 29

day of November, 2007, be deemed good and sufficient.

Oral Argument  
directed:

ENTER:

*[Signature]*  
J.S.C.

*[Signature]*  
J.S.C.

*Opposition papers shall be filed in Part 35 + served on all parties by December 7, 2007.*



At an Ex Parte Term of the Supreme of Court of the State of New York, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York on the \_\_\_\_ day of November, 2007.

P R E S E N T:

Honorable \_\_\_\_\_,  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

\_\_\_\_\_  
C.D. KOBSONS, INC.,

Plaintiff,

-against-

UNITED NATIONAL SPECIALTY INSURANCE  
COMPANY,

Defendant.

\_\_\_\_\_  
X

Index No. 115 77/07

ORDER TO  
SHOW CAUSE

Upon the Affirmation of Corey M. Reichardt, Esq., dated November 26, 2007, and all the papers and proceedings heretofore had herein,

LET the Parties show cause at IAS Term, Part \_\_\_\_\_, of this court to be held at the courthouse thereof, located at 60 Centre Street, Room \_\_\_\_\_, New York, New York 10007, on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard why an order should not be made and entered herein:

1. Pursuant to CPLR Section 6313, issuing a Temporary Restraining Order, enjoining UNITED NATIONAL SPECIALTY INSURANCE COMPANY from terminating the policy it wrote for C.D. KOBSONS, INC. under policy number #M5200158 on June 15, 2007;

2. For such other and further relief as the court deems just, proper and equitable in the circumstances.

SUFFICIENT REASON APPEARING THEREFORE, and pending the hearing of this application, the defendant be and are hereby enjoined from terminating the insurance policy it issued for plaintiff under policy number # M5200158 on June 15, 2007; and

SUFFICIENT REASON APPEARING THEREFORE, let service of a copy of this order, together with the papers upon which it was granted, upon: defendant, UNITED NATIONAL SEPCIALTY INSURANCE COMPANY via Overnight Mail on or before the \_\_\_\_ day of November, 2007, be deemed good and sufficient.

ENTER:

\_\_\_\_\_  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

\_\_\_\_\_  
C.D. KOBSONS, INC.,

Index No.

Plaintiff,

-against-

UNITED NATIONAL INSURANCE,  
COMPANY

Defendant.

AFFIRMATION IN  
SUPPORT

\_\_\_\_\_  
Corey M. Reichardt, an attorney duly admitted to practice law before the Courts of the State of New York, affirms that the following is true under the penalties of perjury:

1. That I am an associate with BRILL & ASSOCIATES, P.C., attorneys for the plaintiff, C.D. KOBSONS, INC., in this action, and, as such, I am familiar with this action by virtue of my familiarity with the file maintained by this office.
2. This affirmation is submitted in support of the instant application pursuant to CPLR § 6311 for a Preliminary Injunction, enjoining defendant from terminating the insurance policy it issued to plaintiff under policy number #M5200158 on June 15, 2007.
3. A summons and complaint seeking a declaratory judgment on behalf of C.D. KOBSONS, INC. has been filed with the court and a copy of same is annexed hereto as Exhibit "A".
4. A full detail of the facts surrounding the instant application is set forth in the Affidavit of Doungnat Eamtrakul, President of C.D. KOBSONS, INC., annexed hereto as Exhibit "B" and below:
5. On or about June 15, 2007, defendant, UNITED NATIONAL SPECIALTY INSURANCE COMPANY ("UN") renewed a general liability policy it had written for plaintiff,

C.D. KOBSONS, INC. ("Kobsons") to insure the premises known as 500 West 28<sup>th</sup> Street, New York, New York under policy number #M5200158. A copy of the Common Policy Declarations is annexed hereto as **Exhibit "C"**.

6. On October 19, 2007, plaintiff received an Emergency Declaration from the New York City Department of Buildings stating that the premises known as 500 West 28<sup>th</sup> Street, New York, New York has been declared unsafe and in imminent peril. The DOB, however, failed to issue a vacate order to the occupants of the building.

7. The Department of Buildings directed that plaintiff provide temporary shoring at the cellar and first story immediately, because the second, third and fourth stories have sagged; structural cracks have developed at exposure 4 and interior partitions; and the wood stair-assembly is out of level at all stories. A copy of the notice is annexed hereto as **Exhibit "D"**.

8. On October 23, 2007, plaintiff notified defendant and her insurance broker of the Emergency Declaration to advise them of the condition as well as plaintiff's intention to comply with the notice. See **Exhibit "E"**.

9. Upon being notified of the Emergency Declaration, plaintiff attempted to schedule a hearing before the Department of Buildings, however, said meeting was not held until November 15, 2007. At that time, despite the fact that the Department of Buildings deemed the subject premises "unsafe", they would not issue a temporary vacate order so that repairs could be effectuated without exposing the tenants to potential risk/harm. See, correspondence from plaintiff to Chris Santulli, P.E. dated November 20, 2007, annexed hereto as **Exhibit "F"**.

10. Meanwhile, in between being served with the notice from the Department of Buildings and subsequently attending the hearing, defendant, UN, served plaintiff with a Notice of Cancellation of its general liability policy under number #M5200158, terminating Kobsons'

coverage on November 27, 2007. A copy of the Notice of Cancellation is annexed hereto as **Exhibit "G"**.

11. The Notice of Cancellation identifies Section 3426(c)(1) of the Insurance Law, subsection (E) as the reason for termination. The section reads as follows:

(E) material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with the insurer's objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;

12. However, as more fully set forth in the affidavit of Eliezer Dubinsky, P.E., annexed hereto as **Exhibit "H"**, the subject premises did not undergo any material physical change subsequent to the June 15, 2007 renewal date.

13. It is apparent from correspondences dated as far back as January 10, 2007 which are annexed to Mr. Dubinsky's affidavit that there were structural problems with the subject premises necessitating shoring, nine months prior to the Notice.

14. As set forth in the affidavit of Mr. Cesar Arrascue, insurance broker for plaintiff, (annexed here to as **Exhibit "I"**), upon his information and belief, UN retained the right to conduct any type of inspections it wished prior to renewing the subject general liability policy. Neither plaintiff, nor Mr. Arrascue, is aware if UN availed themselves of that retained right.

15. Nevertheless, the subject building is in the exact condition as it was, prior to UN's renewal of the general liability policy. UN seeks to terminate the policy now solely based on the Department of Buildings' emergency declaration.

16. There has been no material change in the nature of the risk, as the condition of the building has not changed since the renewal date.

17. The defendant should not be able to terminate Kobsons' coverage simply because of the fortuitous event that the DOB issued an unsafe building notice regarding a condition that has long existed prior to renewal of the current policy. Furthermore, UN should be estopped from terminating its coverage to the extent that it had a right to inspect the building at renewal and did not avail itself of its retained right to conduct an inspection prior to renewing the general liability policy and accurately evaluate the associated risk.

18. As set forth in the Affidavit of Mr. Arrascue (Exhibit "H"), he has not been able to procure any type of general liability insurance for Kobsons from a different carrier. As the structure of the premises has been deemed unsafe by the Department of Buildings, no other providers are willing to write Kobsons a general liability policy. The plaintiff is thus in the particular egregious position of being required to effectuate repairs in the building without any liability insurance protection to those persons occupying the premises.

19. As such, to permit UN to cancel its obligation to plaintiff, without any material change in the condition of the building since the renewal date of the policy or due to the fact that they did not accurately evaluate the risks associated with the subject premises, prior to the renewal date of the general liability policy, will cause plaintiff immediate and irreparable harm.

20. Since the Department of Buildings refuses to issue a temporary vacate order, all necessary repairs must be effectuated while tenants still reside in the subject building.

21. Accordingly plaintiff respectfully requests this court to issue a Preliminary Injunction pursuant to CPLR §6311 enjoining UNITED NATIONAL SPECIALTY INSURANCE COMPANY from cancelling the general liability policy it issued to C.D.

KOBSONS, INC. under policy number M5200158, until a hearing can be held determining whether the cancellation is valid.

22. No prior application for the relief requested herein has heretofore been made to this or any other Court or Justice.

WHEREFORE, for the foregoing reasons, plaintiffs, pray for an order pursuant to CPLR §6311, for a Preliminary Injunction enjoining defendant from terminating the insurance policy it issued to plaintiff under policy number #M5200158 on June 15, 2007, together with all such other and further relief as the Court deems, proper and equitable in the circumstances.

Dated: New York, New York  
November 27, 2007

By:

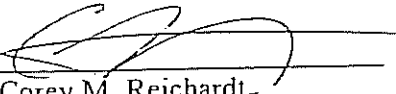
  
Corey M. Reichardt

EXHIBIT “A”



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----x  
C.D. KOBSONS, INC.,

Plaintiff,

-against-

UNITED NATIONAL SPECIALTY INSURANCE  
COMPANY,

Defendant.  
-----x

Index No.

Venue: CPLR 503

SUMMONS

Plaintiff's Address:  
212 West 122<sup>nd</sup> Street  
New York, New York

TO THE ABOVE NAMED DEFENDANT:

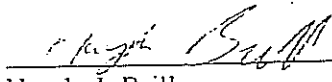
YOU ARE HEREBY SUMMONED to answer the complaint of the plaintiff, C.D. KOBSONS, INC., copies of which are herewith served upon you, and to serve copies of your answer upon the undersigned, within (20) days after service upon you of this Summons and Complaint, exclusive of the day of service, or within (30) days after completion of service where service is made by any manner other than personal delivery. In case of your failure to answer the complaint, judgment will be taken against you by default for the relief in the complaint.

Dated: New York, New York  
November 27, 2007

Yours, etc.

BRILL & ASSOCIATES, P.C.

By:

  
Haydn J. Brill

Attorneys for Plaintiff

111 John Street, Suite 1070

New York, New York 10038

(212) 374-9101

Our File No: 1293-CDK

To:

UNITED NATIONAL SPECIALTY INSURANCE COMPANY  
411 East Wisconsin Avenue, Suite 700  
Milwaukee, Wisconsin 53202

UNITED NATIONAL SPECIALTY INSURANCE COMPANY  
c/o Superintendent of Insurance for the State of New York.  
25 Beaver Street  
New York, New York 10004

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----x  
C.D. KOBSONS, INC.,

Index No.

Plaintiff,

-against-

UNITED NATIONAL SPECIALTY INSURANCE  
COMPANY,

VERIFIED COMPLAINT

Defendant.  
-----x

Plaintiff, C.D. KOBSONS, INC., as and for its Verified Complaint for a declaratory judgment herein, respectfully sets forth and alleges, upon information and belief, as follows:

THE PARTIES AND JURISDICTION

1. Plaintiff, C.D. KOBSONS, INC. (hereinafter "KOBSONS") is a domestic corporation of the State of New York.
2. That at all relevant times hereinafter mentioned, defendant UNITED NATIONAL SPECIALTY INSURANCE COMPANY (hereinafter "UNITED") was and still is a foreign corporation of the State of Wisconsin admitted to issue general liability insurance policies in the State of New York since May 17, 1999.
3. That at all times hereinafter mentioned, KOBSONS was and is the owner of certain real property known as 500 West 28<sup>th</sup> Street, New York, New York.
4. That in consideration of the premiums paid, KOBSONS obtained and defendant UNITED issued and delivered a general liability insurance policy to KOBSONS known and designated as policy number M5200158 for a one year term commencing on July 1, 2003.
5. The aforesaid policy issued by UNITED to KOBSONS was renewed on June 15, 2007, for a one year term.

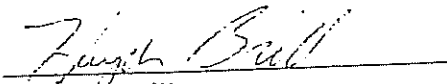
WHEREFORE, plaintiff demands judgment adjudicating its rights to enjoining UNITED from canceling policy number M5200158, and that this court:

- a. determine and declare that UNITED's termination of coverage be deemed null and void;
- b. determine and declare that pursuant to the insurance procurement contract that 500 West 28<sup>th</sup> Street is insured by UNITED under a general liability policy to the end of the policy term and any applicable renewals to which KOBSONS may be entitled;
- c. determine and declare that the defendant has waived, and is estopped from canceling coverage to KOBSONS or otherwise restricting the coverage available to the plaintiff ;
- d. granting such other and further relief as to the court may seem just and proper.

Dated: New York, New York  
November 27, 2007

Yours, etc.

BRILL & ASSOCIATES, P.C.

By:   
Haydn J. Brill  
Attorneys for Plaintiff  
111 John Street, Suite 1070  
New York, New York 10038  
(212) 374-9101

To:

UNITED NATIONAL SPECIALTY INSURANCE COMPANY  
411 East Wisconsin Avenue, Suite 700  
Milwaukee, Wisconsin 53202

UNITED NATIONAL SPECIALTY INSURANCE COMPANY  
c/o Superintendent of Insurance for the State of New York.  
25 Beaver Street  
New York, New York 10004

*Attorney Verification*

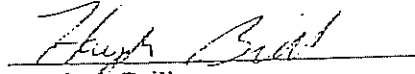
Haydn J. Brill, an attorney duly admitted to the practice of law in the State of New York, deposes and says:

That he is the attorney for the plaintiff, C.D. KOBSONS, INC., in the within action; that he has read the within Complaint and knows the contents thereof, and that same is true to his own knowledge, except and to the matters herein stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

That the sources of his information and knowledge are investigation and records on file.

That the reason this verification is being made by deponent and not by defendant is that the defendant is not within the county where deponent has his office.

Dated: New York, New York  
November 27, 2007

  
Haydn J. Brill

Index No.:

Year

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

C.D. KOBSONS, INC.,

Plaintiff,

-against-

UNITED NATIONAL SPECIALTY INSURANCE COMPANY,

Defendant.

SUMMONS AND VERIFIED COMPLAINT FOR A DECLARATORY JUDGMENT

BRILL & ASSOCIATES, P.C.

*Attorneys for Plaintiff*

*C.D. Kobsons, Inc.*

111 John Street, Suite 1070

New York, New York 10038

(212) 374-9101

To:

*Attorney(s) for*

*Service of a copy of the within*

is hereby admitted.

Dated:

*Attorney(s) for*

PLEASE TAKE NOTICE

NOTICE OF ENTRY

☐ that the within is a (certified) true copy of a  
duly entered in the office of the clerk of the within named Court on

NOTICE OF SETTLEMENT

☐ that an Order of which the within is a true copy will be presented for  
settlement to the Hon. one of the judges of the within named Court, at , on , at

M.

Dated:

Yours, etc.

BRILL & ASSOCIATES, P.C.

*Attorneys for Plaintiff*

111 John Street, Suite 1070

New York, New York 10038

(212) 374-9101

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
C.D. KOBSONS, INC.,

Plaintiff,

AFFIDAVIT

- against -

UNITED NATIONAL SPECIALTY INSURANCE  
COMPANY,

Defendant.

-----X  
STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

Doungnat Eamtrakul, being duly sworn, deposes and says:

1. I am the President and Managing Agent of C.D. Kobsons, Inc., the entity that owns the premises known as 500 West 28<sup>th</sup> Street, New York, New York.
2. On June 15, 2007, United National Specialty Insurance Company renewed a general liability policy it issued insuring the above referenced premises under policy number #M5200158.
3. On October 19, 2007, I received an Emergency Declaration Form from the NYC Department of Buildings stating that the subject premises was declared unsafe and in imminent peril, requiring immediate shoring at the cellar and first story.
4. Upon receiving said notification, I contacted my insurance broker, Mr. Cesar Arrascue and United National Specialty Insurance Company to advise them of the declaration.
5. On or about October 30, 2007, I received a Notice of Cancellation from United National Specialty Insurance Company advising that my coverage will terminate on November 27, 2007 due to an act or omission that occurred after the last renewal date that substantially and materially increased the hazard insured against, and which occurred subsequent to inception of the current policy period.

6. On November 15, 2007 a hearing was held with the Department of Buildings, (which took twenty-seven days to schedule,) where my engineer, Mr. Dubitsky, advised the Department to issue a temporary vacate order, so the repairs may be effectuated without the risk of potential harm to the residing tenants.

7. Unfortunately, the Department of Buildings did not agree with my engineer and has directed that repairs be effectuated immediately, notwithstanding that there are clients residing in the "unsafe" premises.

8. Upon receiving the above referenced Notice of Cancellation, I attempted to procure liability insurance from a different carrier, however, my insurance broker, Mr. Cesar Arrasue, has advised me that no company is willing to insure my building as the risk is "too high" in light of the Emergency Declaration.

9. As more fully set forth in my attorney's affirmation and the affidavit of Mr. Dubinsky, the condition of my building necessitating shoring, existed prior to June 15, 2007 (the renewal date of my insurance policy).

10. As the condition of my building did not arise from an act or omission that occurred subsequent to the renewal date, United National Specialty Insurance Company should not be permitted to terminate the general liability policy.


11. Should this Court permit United National Specialty Insurance Company to terminate the general liability policy, I will be forced to effectuate repairs to a "dangerous" building without any type of liability insurance to protect third parties from any possible harm.

12. As the Department of Buildings refuses to issue a temporary vacate order but directed that repairs be made immediately, should the general liability policy be terminated I will be forced to




sustain the immediate and irreparable harm of exposing my tenants to substantial risk without any type of insurance.

13. Accordingly, I respectfully submit that this Court issue a Preliminary Injunction, enjoining United National Specialty Insurance Company from terminating my general liability policy.

  
\_\_\_\_\_  
Doungrat Eamtrakul

Sworn to before me this  
26<sup>th</sup> day of November, 2007

  
\_\_\_\_\_  
Notary Public

Susel Porven  
Notary Public, State of New York  
01PO6133799  
Qualified in Queens County  
Commission Expires 29

EXHIBIT “C”


 united  
national  
group

# UNITED NATIONAL SPECIALTY INSURANCE COMPANY

A Stock Company  
MILWAUKEE, WISCONSIN

## COMMERCIAL INSURANCE POLICY COMMON POLICY DECLARATIONS

Policy Number: M5200158 Renewal of: M5156187

Named Insured: C.D. KOBSON INC.

Mailing Address: C/O DIANA EAMTRAKUL  
Street: 212 WEST 122ND STREET.  
APT. 1  
City: NEW YORK  
State & Zip Code: NY 10027

Producer Name: ARCO INSURANCE AGENCY  
Address: 68 CROFT LANE  
SMITHTOWN, NY 11787  
631-366-2033 FAX: 631-366-2589

Producer Number: 01194

Policy Period: From: June 15, 2007 To: June 15, 2008  
at 12:01 A.M. Standard Time at the mailing address shown above.

Business Description: BUILDING OWNER

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE, AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED.  
THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

|  | PREMIUM    |
|--|------------|
| Commercial Property Coverage Part          | \$3,199.00 |
| Commercial General Liability Coverage Part | \$1,839.00 |
| NY FIRE FEE                                | \$30.20    |

TOTAL \$5,068.20

Premium shown is payable: \$5,068 at inception; 1st Anniversary; 2nd Anniversary

Form(s) and Endorsement(s) made a part of this policy at time of issue:

SEE ATTACHED SCHEDULE OF POLICY FORMS AND ENDORSEMENTS SAA-100

By:

Countersigned

INSURED

COMMERCIAL PROPERTY COVERAGE  
DECLARATIONS

Policy No. M5200158

Effective Date: June 15, 2007

12:01 A.M., Standard Time

☐ Supplemental Declarations is Attached.

## BUSINESS DESCRIPTION\*

BUILDING OWNER

## DESCRIPTION OF PREMISES

PREM. NO. BLDG. NO. LOCATION, CONSTRUCTION AND OCCUPANCY

001 001 500 WEST 28TH STREET

Joisted Masonry

NEW YORK

NY 10001

4STY BRICK BLDG OCC W/MER &amp; 6APT

## COVERAGES PROVIDED INSURANCE AT THE DESCRIBED PREMISES APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF INSURANCE IS SHOWN

| PREM. NO. | BLDG. NO. | COVERAGE                | LIMIT OF INSURANCE | COVERED CAUSES OF LOSS | COINSURANCE + | RATES |
|-----------|-----------|-------------------------|--------------------|------------------------|---------------|-------|
| 001       | 001       | Building                | \$800,000          | Basic                  | 80%           | 0.338 |
| 001       | 001       | Loss of Business Income | \$125,000          | Basic                  | 80%           | 0.227 |
| 001       | 001       | EQUIPMENT BREAKDOWN     |                    | PREMIUM                |               | \$211 |

## OPTIONAL COVERAGES APPLICABLE ONLY WHEN ENTRIES ARE MADE IN THE SCHEDULE BELOW

+ IF EXTRA EXPENSE COVERAGE, LIMITS ON LOSS PAYMENT

| PREM. NO. | BLDG. NO. | AGREED VALUE    | COVERAGE | AMOUNT | REPLACEMENT COST (X)<br>BUILDING PERSONAL PROPERTY<br>INCLUDING "STOCK" |
|-----------|-----------|-----------------|----------|--------|---|
|           |           | EXPIRATION DATE |          |        |   |

| PREM. NO. | BLDG. NO. | BUILDING | PERSONAL PROPERTY | INFLATION GUARD (Percentage) | ++ MONTHLY LIMIT OF<br>INDEMNITY (Fraction) | ++ MAXIMUM PERIOD<br>OF INDEMNITY (X) | ++ EXTENDED PERIOD<br>OF INDEMNITY (Days) |
|-----------|-----------|----------|-------------------|------------------------------|---|---------------------------------------|---|
|-----------|-----------|----------|-------------------|------------------------------|---|---------------------------------------|---|

## MORTGAGE HOLDER(S)

++ APPLIES TO BUSINESS INCOME ONLY

PREM. NO. BLDG. NO. MORTGAGE HOLDER NAME AND MAILING ADDRESS

## DEDUCTIBLE

\$250 EXCEPTIONS: \$1,000

## FORMS AND ENDORSEMENTS (other than applicable Forms and Endorsements shown elsewhere in the policy)

Forms and Endorsements applying to this Coverage Part and made part of this policy at time of issue:  
APPLICABLE TO ALL COVERAGES:

SEE ATTACHED SCHEDULE OF POLICY FORMS AND ENDORSEMENTS SAA-100

APPLICABLE TO SPECIFIC PREMISES/COVERAGES: PREM. NO. BLDG. NO. COVERAGES FORM NUMBERS

## PREMIUM

Premium for this Coverage Part \$ 3,199.00

\*Information omitted if shown elsewhere in the policy.

\*\*Inclusion of date optional.

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

## COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

EFFECTIVE DATE: June 15, 2007  
12:01 A.M., Standard Time

POLICY NO.: M5200158

## LIMITS OF INSURANCE

|  |    |           |                |
|--|----|-----------|----------------|
| General Aggregate Limit (Other Than Products-Completed Operations) | \$ | 2,000,000 |                |
| Products-Completed Operations Aggregate Limit                      | \$ | INCLUDED  |                |
| Personal and Advertising Injury Limit                              | \$ | 1,000,000 |                |
| Each Occurrence Limit  | \$ | 1,000,000 |                |
| Fire Damage Limit  | \$ | 50,000    | ANY ONE FIRE   |
| Medical Expense Limit  | \$ | 5,000     | ANY ONE PERSON |

## RETROACTIVE DATE (CG 00 02 ONLY)

Coverage A of this insurance does not apply to "bodily injury" or "property damage" which occurs before the Retroactive Date, if any, shown here:

(Enter Date or "None" if no Retroactive Date applies)

## FORM OF BUSINESS

☐ Individual
 ☐ Joint Venture
 ☐ Partnership
 ☒ Organization (other than Partnership or Joint Venture)

## LOCATION OF PREMISES

Location of All Premises You Own, Rent or Occupy:

Loc # 001 500 WEST 28TH STREET, NEW YORK, NY

10001

## PREMIUM

| Loc # | Classification   | Code No. | Premium Basis | Rate    |           | Advance Premium |           |
|-------|--|----------|---------------|---------|-----------|-----------------|-----------|
|       |  |          |               | Pr/Co   | All Other | Pr/Co           | All Other |
| 001   | APARTMENTS, TENEMENTS, BOARDING OR ROOMING HOUSES-WITHOUT ELEVATOR   | 60022    | UNITS 6       | INCL ** | 250.231   | INCL **         | 1501      |
| 001   | BUILDINGS OR PREMISES-BANK OR OFFICE-MERCANTILE OR MANUFACTURING MAINTAINED BY THE INSURED-OTHER THAN NOT-FOR-PROFIT | 61217    | AREA 1720     | INCL ** | 196.410   | INCL **         | 338       |
| **    | PRODUCTS COMPLETED OPERATIONS ARE SUBJECT TO THE GENERAL AGGREGATE LIMIT **  |          |               |         |           |                 |           |

Total Advance Premium \$1,839.00

## FORMS AND ENDORSEMENTS

SEE ATTACHED SCHEDULE OF POLICY FORMS AND ENDORSEMENTS SAA-100

EXHIBIT “D”



## EMERGENCY DECLARATION FORM

To: Office of Operations

From: Christopher M. Santulli, P.E., Borough Commissioner, Manhattan

Subject: ☐ Immediate Emergency Declaration ☒ Emergency Declaration

|   |                                |
|---|--------------------------------|
| Premises: 311 Tenth Ave. aka 500 West 28 <sup>th</sup> Street   | Owner                          |
| Borough: Manhattan  | C. D. Kobsons, Inc.            |
| Block/Lot: 699/37   | 212 West 122 <sup>nd</sup> St. |
| C.B.: 104   | New York, NY 10027             |
| <input checked="" type="checkbox"/> Occupied <input type="checkbox"/> Unoccupied <input type="checkbox"/> Vacated |                                |

Conditions of Structure and Recommended Remedy:

Second, third and fourth stories have sagged + or - 4", at the center of the building. Structural cracks have developed at exposure 4 (north wall), and interior partitions. The wood stair-assembly, at all stories, is out of level.

Remedy: Provide temporary shoring at the cellar and first story.

Naweed Chaudhri, P.E. (on 10/15/07) and Inspector Pugach inspected this structure on 10/15/07 and 10/16/07 and requests that the condition above described be made safe by ☐ demolition ☐ repair ☐ sealing ☐ sidewalk shed ☐ fence ☒ shoring, or ☐ other (describe) \_\_\_\_\_ in order to ensure the public safety.

| Complete Only If UB Was Declared Previously | Must Complete                          |
|---|--|
| Unsafe Building Information                 | Building Description                   |
| UB #:                                       | Height/Stories: 40/4 Stories           |
| Issuance Date:                              | Construction Class: C-III              |
| Survey Date:                                | Occupancy Class: Commercial/M.D.       |
| Precept Date:                               | Hazardous Violation: 090507C04VP03, 04 |
|   | 101607C04VP04, 05                      |

Concurred:

*Dennis Zantello*  
Administrative Chief Inspector

10/17/07  
Date

Approved:

*Christopher M. Santulli*  
Borough Commissioner

10/17/07  
Date

UB-12 (Rev. 11-03)

C.D. Kobsons, Inc.  
212 West 122<sup>nd</sup> St., Suite 1  
New York, NY 10027  
Tel. 212-866-4411  
Cell 1-917-447-6534

October 23, 2007

To: United National Specialty Insurance Company  
Three Bala Plaza, East - Suite :300  
Bala Cynwyd, PA 19004

Ref: 311 Tenth Avenue a/k/a 500 West 28<sup>th</sup> Street NY , NY 10001  
Policy: M 5200158, ( M 51516187 )

Dear United National Specialty Insurance Company,

I received a letter from NYC Department of Buildings Commissioner and Emergency Declaration regarding the unsafe condition of the building. Our engineer will contact DOB to comply with the repairs or demolishing the building. I was advised to notify Arco Insurance, our agency and your company. Thank you for your cooperation.

Best Regards,

Doungrai Eamtrakul ( Diane ) , President  
C.D. Kobsons, Inc.

Encls: A copy of Letter from Chris Santuli DOB Oct 17  
A copy of Emergency Declaration Form

cc. Arco Insurance Agency



EXHIBIT "F"

C.D. Kobsons, Inc.  
212 West 122<sup>nd</sup> St., Suite 1  
New York, NY 10027  
Tel. 212-866-4411  
Cell; 1917-447-6534  
Email: [SofjaDE@AOL.com](mailto:SofjaDE@AOL.com)

November 20, 2007

To: Chris M. Santulli, P.E.  
Borough Commissioner  
Department of Buildings  
280 Broadway,  
New York, NY 10007

Ref: 311 Tenth Avenue Emergency Declaration

Dear Mr. Santulli;

Follow up our meeting on November 15 with Eli Dubinsky- the Engineer, Andrew Baker- Maximum Contractor, Justice Mc Allister, Steven Steinhart-Legal Counsel and myself Diane Eamtrakul - C.D. Kobsons, Owner, per your request, I am submitting the following as per our discussion;

1. Photos of the existing metal supports (50 feet I- beam shoring )along the basement. ( 12 photos of shoring and 3 close up of tale's tell indicators ).Two Tales' Tells monitor a major stress crack in the basement column ( front support )and on the stone foundation near the entrance of the basement.

2. Copies of Eli Dubinsky's Engineer Reports; Dated: Mar.15, 2006/April 13,2006/June 1,2006/July19,2006/Aug 10,2006/Oct 11,2006/Feb21, 2007/ July 11,2007 ( all the tab readings were already provided ).

3. Additional photos;

A-1 Photo shows the leak of the ceiling in the middle of store ( north wall)

A2 the small leak from the floors above due to settling of the plumbing pipes and leakage on store ceiling ground floor.

A3 From the top of the roof indicates wall cracks along the party wall connected to the gas station before demolition during 2006 Christmas.

A4 Joists and supporting beam of 2R floor shows addition support part of the sinking floors (2R)

-The right line indicated the stress crack long the beam in front of the fire place.

A5 & A6 Gas Station demolishing ( 303-309 Tenth Avenue ) & the oil tanks were removed during Christmas 2006.

A7 The collapsed of south walls seen from the rear during the demolishing of the gas station.

As per your engineers' direction, you advised us to shore the basement and first floor and submit the shoring plans immediately. We inquired many structure engineers to perform the job since Mr Dubinsky and many other structure Engineers in NYC already had commitment with other projects or not available during this Thanksgiving Holiday to perform the job within two weeks. Mr. Brian Flynn, Structure Engineer and only one other engineer responded to our calls. Mr Flynn inspected the premise and will write a report and submit the Shoring plan to Department of Buildings by next week or within two weeks. I ask that you permit us a few extra days additional time because it is Holiday week. A lot of people already had plans and we do not have a full cooperation from our tenants besides it took 29 days to receive the appointment ( Nov. 15) to meet with you after the Emergency Declaration ( Oct 17 ) was issued.

All additional photos (3: A1 - A7) indicated hidden damages which caused by water leaking due to the settling pipes, the deterioration of bricks, broken walls and vibrations from the next door demolition works. I am supporting Mr. Dubinsky recommendation to urge you again to issue a temporary vacate order to help us relocate tenants temporary, for their safety during the inspection and repairs. Mr Flynn indicated that if there is any discovery during the inspection for studying shoring plans and repair recommendations find any alarm structure which may lead to the building collapse he will immediately notify you. The details of repair which he suggests also will be submitted to follow.

Please do not hesitate to call me anytime if you have any questions or concern.

Best Regards,

Diane Eamirakul, President  
C.D. Kobsons, Inc.

EXHIBIT “G”

## NOTICE OF CANCELLATION, NONRENEWAL, CONDITIONED RENEWAL OR CHANGE IN TERMS, CONDITIONS OR RATES

(New York)

NAME AND  
ADDRESS  
OF INSURANCE  
COMPANYUnited National Specialty Insurance Company  
Three Bala Plaza, East Suite 300  
Bala Cynwyd PA 19004

KIND OF POLICY

Commercial Insurance Policy

POLICY/APPLICATION/BINDER NO.: M 5200156

EFFECTIVE DATE OF NOTICE

11/7/07

(DATE)

12:01 AM

(HOUR-STANDARD TIME AT THE ADDRESS OF THE INSURED)

DATE OF MAILING: 10/25/07

NAME AND ADDRESS OF AGENT

Morstan General Agency, Inc.

P O Box 4500

Manhasset NY 11030-4500

BROKER:

Arco Insurance

68 Croft Lane

Smithtown NY 11787

NAME AND  
ADDRESS  
OF INSUREDC.D. Kotson Inc. c/o Diana Eamralul  
212 West 122nd Street Apt 7  
New York NY 10027

## REASONS FOR CANCELLATION

Cancellation is based on one or more of the following which appear under Section 3426(c)(1), Section 3426(c)(3) and Section 3426(c)(4) on the New York Insurance Law

Code

No. Section 3426(c)(1)

- 1 (A) nonpayment of premium provided however, that a notice of cancellation on this ground shall inform the insured of the amount due
- 2 (B) conviction of a crime arising out of acts increasing the hazard insured against;
- 3 (C) discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim thereunder;
- 4 (D) after issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;
- 5 (E) material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with the insurer's objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;
- 6 (F) a determination by the superintendent that continuation of the present premium volume of the insurer would jeopardize that insurer's solvency or be hazardous to the interests of policyholders of the insurer, its creditors or the public;
- 7 (G) a determination by the superintendent that the continuation of the policy would violate, or would place the insurer in violation of, any provision of the Insurance Law (Chapter 28)
- 8 (H) the insurer has reason to believe, in good faith and with sufficient cause, that there is a probable risk or danger that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds, provided, however, that:
  - (i) the insured must act within ten days of review by the Insurance Department of the ground for cancellation is desired pursuant to item (iii) of this subparagraph (H); and
  - (ii) notice of cancellation on this ground shall be provided simultaneously by the insurer to the Insurance Department; and
  - (iii) upon written request of the insured made to the Insurance Department within ten days from the insured's receipt of notice of cancellation on this ground, the Insurance Department shall undertake a review of the ground for cancellation to determine whether or not the insurer has satisfied the criteria for cancellation specified in this subparagraph; if after such review the Insurance Department finds no sufficient cause for cancellation on this ground, the notice of cancellation on this ground shall be deemed null and void

## Section 3426(c)(3)

- 9 With respect to professional liability insurance policies, in addition to the bases for cancellation set forth above in Code Nos. 1 through 8, there has been revocation or suspension of the insured's license to practice his or her profession, or if the insured is a hospital, if no longer possesses a valid operating certificate under Section 2801-a of the public health law.

## Section 3426(c)(4)

With respect to an excess liability policy, in addition to the bases for cancellation set forth above in Code Nos. 1 through 8, there has been cancellation of one or more of the underlying policies providing primary or intermediate coverage, where: (a) such cancellation is based upon Code Items 1 through 8 or 9, and (b) such policies are not replaced without lapse

Additional Information regarding your rights under the Consumer Credit Reform Act

Pursuant to the Consumer Credit Reform Act of 1996, effective September 30, 1997, you are informed that:

The consumer reporting agency identified on this form did not make any decisions regarding the stated insurance policy. Therefore, the consumer reporting agency would not be able to provide you with the specific reasons why the insurance company is taking the present action.

You have the right to obtain within 60 days of the receipt of this notice a free copy of your credit report from the consumer reporting agency which has been identified on this form. (Prior to September 30, 1997, you have the right to obtain a free copy of your credit report within 30 days of the receipt of this notice.)

You have the right to dispute inaccurate information by contacting the consumer reporting agency directly. Once you have directly notified the consumer reporting agency of your dispute, the agency must, within a reasonable period of time reinvestigate and record the current status of the disputed information. If the reinvestigation, such information is found to be inaccurate or unverifiable, such information must be promptly deleted from your records. If the investigation does not resolve the dispute, you may file a brief statement setting forth the nature of the dispute with the consumer reporting agency. Your statement will then be included or summarized in any subsequent consumer report containing the information in question.

For complete information regarding the Federal Consumer Credit Protection Law please refer to The Code of the Laws of the United States of America, Title Chapter 41, Subchapter III, (15 U.S.C. §1681 et seq.)

AUTHORIZED REPRESENTATIVE

0-111-1

NOTICE OF CANCELLATION, NONRENEWAL, CONDITIONED RENEWAL OR CHANGE IN TERMS, CONDITIONS OR RATES  
(New York)

NAME AND ADDRESS OF INSURANCE COMPANY  
United National Security Insurance Company  
Three E 9th Floor East Side NYC  
East City Plaza 94 10004

NAME AND ADDRESS OF INSURED  
C.D. Anderson, Ltd. One Broadway  
100 West 107th Street Apt 5  
New York NY 10027

KIND OF POLICY:  
Commercial Insurance Policy  
POLICY APPLICATION NUMBER: 11500155  
EFFECTIVE DATE OF NOTICE  
11/27/07 10:01 AM  
DATE OF LOSS: 10/25/07  
NAME AND ADDRESS OF AGENT  
Morison General Agency, Inc.  
P.O. Box 4500  
Manhasset NY 11030-4500

(Under Law,  
Applies to Fire  
or Fire and  
Extended  
Coverage  
Policies, Except  
When  
Cancellation is  
Due to  
Nonpayment of  
Premium)

IF YOU HAVE ANY QUESTIONS IN REGARD TO THIS TERMINATION, PLEASE CONTACT THIS COMPANY'S REPRESENTATIVE AT (company phone number, name of company representative, company address): Morris Chapman (516) 466-4747 Ext. 3746  
Morison General Agency, Inc. P.O. Box 4500 Manhasset NY 11030-4500

THE NEW YORK INSURANCE LAW PROHIBITS INSURERS FROM ENGAGING IN REDLINING PRACTICES BASED UPON GEOGRAPHIC LOCATION OF THE RISK OR THE PRODUCER. IF YOU HAVE ANY REASON TO BELIEVE THAT WE HAVE ACTED IN VIOLATION OF SUCH LAW, YOU MAY FILE YOUR COMPLAINT WITH THE DEPARTMENT EITHER ON ITS WEBSITE AT [WWW.INS.STATE.NY.US/COMPLHOW.HTM](http://WWW.INS.STATE.NY.US/COMPLHOW.HTM) OR BY WRITING TO THE STATE OF NEW YORK INSURANCE DEPARTMENT, CONSUMER SERVICE BUREAU, AT EITHER 25 BEAVER STREET, NEW YORK, NEW YORK 10004-2319 OR ONE COMMERCE PLAZA, ALBANY, NEW YORK 12257.

ALSO SEE ADDITIONAL INFORMATION FOR INFORMATION ON PROCUREMENT OF INSURANCE  
(Applicable item marked "X")

|                     |   |
|---------------------|---|
| Cancellation        | <input checked="" type="checkbox"/> You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with law that your insurance will terminate and from the hour and date mentioned above.<br>Reason(s) for cancellation. See statutory reason(s) designated by Code No(s). <u>55</u> contained in the notice in Code No. 6 and/or note the procedure in the Code No. 5 item if you wish to have an Insurance Department review.<br>Reason(s) for cancellation other than statutory reason(s) or, if required, supplementary to statutory reason(s) are given in the "Important Notices" section.<br>If cancellation is due to nonpayment of premium, the amount of premium due is _____<br>If cancellation is due to nonpayment of premium, payment of overdue premium to us, or your agent or broker will be considered timely if made within 10 days after the mailing of this notice. If payment is made, contact us or your agent or broker immediately.<br>See the "Important Notices" section in this form for "Information on Losses" and other information that may apply. |
| Premium Adjustment  | <input type="checkbox"/> Unearned premium will be refunded in accordance with New York law and the terms of the policy.<br><input type="checkbox"/> Endorsement <u>5</u> setting the amount of return premium at 10% for the unexpired term of this policy.<br><input type="checkbox"/> A bill for the premium earned to the time of cancellation will be forwarded in due course.<br><input type="checkbox"/> Other: _____   |
| Nonrenewal          | <input type="checkbox"/> You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with law that the above mentioned policy will expire effective at and from the hour and date mentioned above and the policy will NOT be renewed for a specific reason(s) stated in the "Important Notices" section.<br>See the "Important Notices" section for "Information on Losses" and other information that may apply.  |
| Conditioned Renewal | <input type="checkbox"/> You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with law that the above mentioned policy will expire effective at and from the hour and date mentioned above and the policy will be renewed. However, the renewal will be conditioned on one or more of the following changes being made in the renewal policy (such being a change of limits, change in type of coverage, reduction of coverage, increase in deductibles, reduction of or increase in premium(s) in excess of 10 percent, exclusive of any premium increase generated as a result of increased exposure units, and/or a new or a renewal of a license rating loss being levied on the policy or such exposure with respect to an excess liability or other coverage may also be conditioned upon requirements being in compliance with changes).   |

Consult your agent, broker or this company if more specific pricing information is desired.  
See the "Important Notices" section in this form for specific reason(s) for conditioned renewal, "Information on Losses" and other information that may apply.

(Advance Notice of Nonrenewal or Change in Policy and Other Important Information Notices are contained on the following pages.)

EXHIBIT “H”

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
C.D. KOBSON, INC.,

Plaintiff,

AFFIDAVIT

- against -

UNITED NATIONAL SPECIALTY INSURANCE  
COMPANY,

Defendant.

-----X  
STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

Eli Dubinsky, P.E., being duly sworn, deposes and says:

1. I am a licensed engineer in the State of New York who was retained by C.D. Kobson to inspect the premises known as 500 West 28<sup>th</sup> Street, New York, New York 10001.
2. On October 19, 2007, C.D. Kobson, Inc. received an "Unsafe Building Notice" from the New York City Department of Buildings.
3. The building is in an "unsafe condition" because the floor joists are sagging and deflection is above and beyond what is allowable based on standard general engineering practice.
4. The above condition requires at least, that shoring must be provided.
5. I have been periodically inspected the subject premises since approximately the end of the 2005/ beginning of 2006 calendar year. However, I have annexed hereto as Exhibit "A," a copy of my reports from January 10, 2007 and February 21, 2007.
6. As there were a few cracks in the building walls at the time I commenced my inspections, "tell tale" monitoring devices were installed by C.D. Kobson, Inc. These monitoring devices are able to read if the cracks are widening or changing.



7. As part of my periodic inspections I would review the results of the "tell tale" monitoring devices.

8. As such, I can affirm that the condition of the floor joists and deflection has been present at the subject premises prior to June 15, 2007.

9. In addition, the current condition of the joists and deflection was not caused by any act or omission on behalf of C.D. Kobson, Inc., that occurred subsequent to June 15, 2007.

10. The "Unsafe Building" violation is a manifestation of a condition that already existed on June 15, 2007 and did not occur subsequent to the aforementioned date.

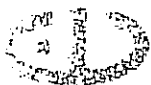
Eli Duhinsky  
Eli Duhinsky, P.E.



Sworn to before me this  
22 day of November, 2007

Haydn J. Brill  
Notary Public

HAYDN J. BRILL  
Notary Public, State of New York  
No. 02BR6109337  
Qualified in New York County  
Commission Expires 05/03/08

**Dubinsky Consulting Engineers. PC**

DESIGN, DEVELOPMENT, INSPECTION, PROPERTY EVALUATION

45 West 34<sup>th</sup> Street  
New York, NY 10001  
Tel: (212) 594-1153  
Fax: (212) 594-9376

January 10, 2007

Ms. Diane Eantrakul  
C/o C.D. Kobsons, Inc.  
212 West 122<sup>nd</sup> Street  
New York, NY 10027Re: 311 10<sup>th</sup> Avenue, (South West Corner of 28<sup>th</sup> Street), Monitoring Devices Tabs

Dear Ms. Eantrakul

We continued monitoring the building mentioned above.

Some of the tabs (tale tell) indicate some changes. Few of them like Tab #: 3 and Tab #: 6 show larger movement.

Some show reversible movements with the new construction on the adjacent site, there will be vibrations and additional forces applied at foundation level and superstructure of your building at 311 10<sup>th</sup> Avenue, NYC which cause concern for farther structural damage and jeopardy to the structure.

Very truly yours:

Eli R. Dubinsky, PE



**Dubinsky Consulting Engineers. PC**  
DESIGN, DEVELOPMENT, INSPECTION, PROPERTY EVALUATION

45 West 34<sup>th</sup> Street,  
New York, NY 10001  
Tel: (212) 594-1153  
Fax: (212) 594-9376

February 21, 2007

Ms. Diane Eantrakul  
C/o C.D. Kobsons, Inc.  
212 West 122<sup>nd</sup> Street  
New York, NY 10027

Re: 311 10<sup>th</sup> Avenue, (South West Corner of 28<sup>th</sup> Street), Monitoring Devices Tabs

Dear Ms. Eantrakul

We continued monitoring the building mentioned above.

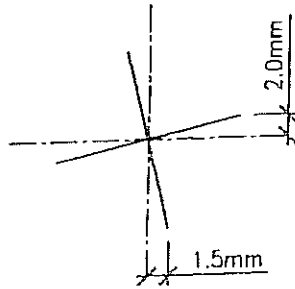
Some of the tabs (taic tell) indicate some changes. Few of them like Tab #: 1, 1A, 4 and 5 show larger movement.

Some show reversible movements with the new construction on the adjacent site, there will be vibrations and additional forces applied at foundation level and superstructure of your building at 311 10<sup>th</sup> Avenue, NYC which cause concern for farther structural damage and jeopardy to the structure.

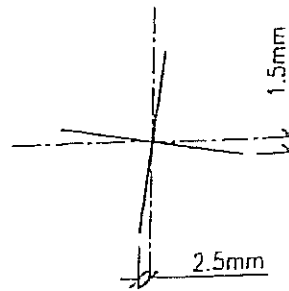
Very truly yours:

Eli R. Dubinsky, PE

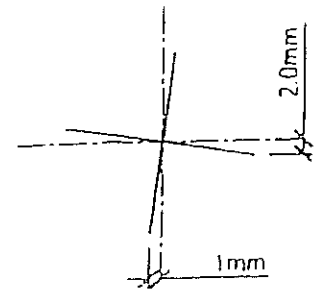
44th WEEK 02.20.2007



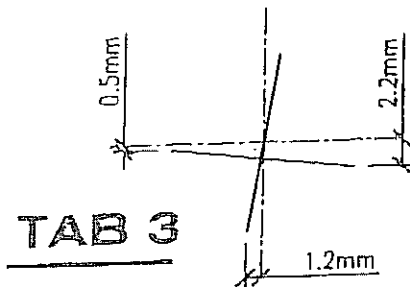
TAB 1



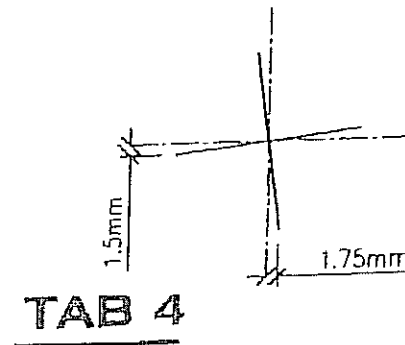
TAB 1A



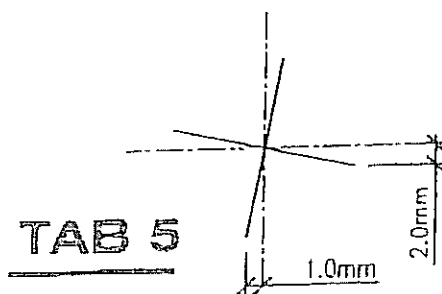
TAB 2



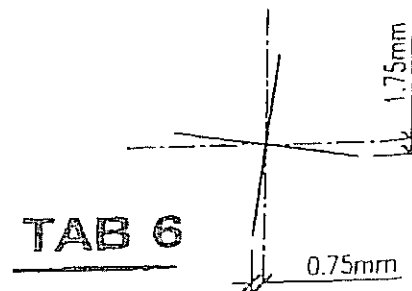
TAB 3



TAB 4



TAB 5



TAB 6

311 10th AVENUE

EXHIBIT "I"

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

\_\_\_\_\_  
C.D. KOBSON, INC.

Plaintiff,

AFFIDAVIT

-against-

UNITED NATIONAL SPECIALTY  
INSURANCE COMPANY,

Defendants.

\_\_\_\_\_  
STATE OF NEW YORK )

ss.: )

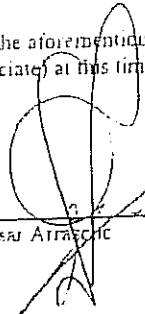
COUNTY OF SUFFOLK )

Cesar Arrascue, being duly sworn, deposes and says:

1. I am a licensed insurance broker in the State of New York.
2. I have been working with C.D. Kobson, Inc., in helping them obtain insurance since approximately 1994.
3. On June 15, 2007, United National Specialty Insurance Company issued a renewal for a general liability policy to C.D. Kobson, Inc. for the premises known as 500 West 28<sup>th</sup> Street, New York, New York.
4. Upon information and belief, United National Specialty Insurance Company had/retained the right to inspect the subject premises prior to renewing the general liability policy.
5. Upon being notified of the violation, United National Specialty Insurance Company informed C.D. Kobson, Inc. of its intention to terminate the General Liability Policy it issued to C.D. Kobson on June 15, 2007 under policy number M5200158.
6. I have attempted to procure general liability insurance for C.D. Kobson, Inc. from a different insurance company, however, due to the fact that the City has deemed the structure of the premises known as 500 West 28<sup>th</sup> Street as unsafe, no other provider is willing to write C.D. Kobson, Inc. a general liability policy.
7. Upon information and belief, the only type of insurance that may be available for C.D. Kobson, Inc., is from the New York Property

Underwriters Association, however, this will only insure for risks associated with fire

8. My client has not asked me to procure the aforementioned insurance (New York Property Underwriters Association) at this time, and thus, have made no application for same

  
Cesar Arrascaite

Sworn to before me this  
26<sup>th</sup> day of November, 2007

  
Notary Public

Suzel Porven  
Notary Public, State of New York  
01PO6133799  
Qualified in Queens County  
Commission Expires 07

Index No. Year  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK  
C.D. KOBSONS, INC.,

Plaintiff

-against-

UNITED NATIONAL SPECIALTY INSURANCE COMPANY.

Defendant

---

ORDER TO SHOW CAUSE and AFFIRMATION IN SUPPORT

---

BRILL & ASSOCIATES, P.C.  
Attorneys for C.D. Kobsons, Inc.  
111 John Street, Suite 1070  
New York, New York 10038  
(212) 374-9101

---

To: \*\*\*

Attorney(s) for \*\*\*

---

Service of a copy of the within \*\*\* Order to Show Cause is hereby admitted.

Dated: November 28, 2007

.....  
Attorney(s) for Defendant-United National  
Specialty Insurance Company

---

PLEASE TAKE NOTICE

☐ that the within is a (certified) true copy of a \*\*\*  
entered in the office of the clerk of the within named Court on \*\*\*

NOTICE OF  
ENTRY

☐ that an Order of which the within is a true copy will be presented for settlement to  
the Hon. \*\*\* one of the judges of the within named Court, at \*\*\*, on \*\*\*, at \*\*\*.

NOTICE OF  
SETTLEMENT

Dated: \*\*\*

BRILL & ASSOCIATES, P.C.  
Attorneys for Plaintiff  
111 John Street, Suite 1070  
New York, New York 10038  
(212) 374-9101



**EXHIBIT C**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
C.D. KOBSONS, INC.,

Plaintiff,

Index No.:

-against-

UNITED NATIONAL SPECIALTY  
INSURANCE COMPANY,

**NOTICE OF FILING OF  
NOTICE OF REMOVAL**

Defendant.  
-----X

PLEASE TAKE NOTICE that the within is a true copy of the Notice of Removal filed in the offices of the Clerk of the United States District Court for the Southern District of New York on December 4, 2007.

Pursuant to 28 § 1446(d), the Supreme Court of the State of New York, New York County, shall proceed no further unless the case is remanded.

Date: December 4, 2007

Yours, etc.

NICOLETTI GONSON SPINNER & OWEN LLP

By: \_\_\_\_\_  
Edward S. Benson

Attorneys for Defendant  
UNITED NATIONAL SPECIALTY  
INSURANCE COMPANY  
555 Fifth Avenue – 8<sup>th</sup> Floor  
New York, New York 10017  
(212) 730-7750

TO:

Brill & Associates, P.C.  
Attorneys for the Plaintiff  
111 John Street, Suite 1070  
New York, NY 10038  
(212) 374-9101  
File No.: 1293-CDK